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December 8, 2009

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, S.W.  
Washington, DC 20554

Re: *Notice of Written Ex Parte Communication*  
*WC Docket No. 07-245 ("Pole Attachment Proceeding");*  
*GN Docket No. 09-29 ("Rural Broadband Strategy Proceeding");*  
*GN Docket No. 09-51 ("National Broadband Plan Proceeding"); and*  
*WC Docket No. 09-154 ("VoIP Pole Attachment Rate Proceeding")*

Dear Ms. Dortch:

On behalf of our clients, Allegheny Power, Baltimore Gas and Electric Co., Dayton Power and Light Co., FirstEnergy Corp., Kansas City Power and Light, National Grid, NSTAR and PPL Electric Utilities (the "*Coalition of Concerned Utilities*"), please accept the attached make-ready cost data, which show that Incumbent Local Exchange Carriers ("ILECs") pay very little each year in make-ready expenses to accommodate their attachments on electric utility poles, while their competitive local exchange carrier ("CLEC") and Cable Company competitors pay far higher amounts.

The attached information, supplied by PPL Electric Utilities ("PPL") and covering the three-year period from 2006-2008, indicates that:

- (1) CLECs incur 12 times more in make-ready costs per year than ILECs.
- (2) Cable Companies incur nine (9) times more in make-ready costs per year than ILECs.
- (3) CLECs pay on average \$11.61 per existing attached pole per year in make-ready expenses.
- (4) Cable Companies pay on average \$0.99 per existing attached pole per year in make-ready expenses.
- (5) ILECs pay on average \$0.11 per existing attached pole per year in make-ready expenses.

ILECs therefore incur \$11.50 less per pole (\$11.61-\$0.11) in annual make-ready expenses than their CLEC competitors, and \$0.88 less per pole (\$0.99-\$0.11) than their Cable Company competitors. Although CLECs and Cable Companies expend comparable total dollar

## KELLER AND HECKMAN LLP

Ms. Marlene H. Dortch, Secretary

December 8, 2009

Page 2

amounts per year in make-ready costs, Cable Companies have been incurring those costs for many more years so that their networks are far larger than existing CLEC networks.

At least two conclusions follow from this make-ready cost data.

First, granting ILECs the same low attachment rate that is paid by CLECs, as the ILECs are demanding in the above-captioned proceedings, would give ILECs a huge financial advantage over their CLEC competitors. It would be inequitable to allow ILECs to pay the same very low, subsidized attachment rate paid by CLECs (let's say \$15 per pole per year) when their CLEC competitors must pay \$11.50 per pole per year in addition to the \$15 per pole per year, for a total of \$26.50 per pole per year.

Moreover, the make-ready cost advantage enjoyed by ILECs is not the only advantage that ILECs already enjoy as pole owners over Cable Company and CLEC licensees. The joint use/joint ownership relationships that ILECs have with electric utilities allow the ILECs, unlike Cable and CLEC licensees, to attach to poles without electric utility oversight. Unlike Cable Companies and CLECs, ILECs do not need electric utility approval to make attachments, and consequently avoid the delay and expense of not only the application process, but also the pre-construction and post-construction inspections to ensure that their attachments were installed properly. In addition, joint use/joint ownership contracts typically grant ILECs two to four feet (2'-4') of communications zone pole space to accommodate both existing and future ILEC attachments, leaving Cable Companies and CLECs to make do with the remainder. Finally, electric utilities often obtain rights-of-way for ILECs but do not do so for third party licensees.<sup>1</sup>

For all of these financial and other reasons, demands from the ILEC industry that they be included in a uniform broadband rate make no sense from a policy perspective, even if the Commission actually possessed any statutory authority to regulate ILEC attachment rates in the first place – which it does not.<sup>2</sup>

The second conclusion to draw from this make-ready cost data is that, at this stage in the build-out of Cable plant and CLEC plant, Cable Companies also have a considerable advantage over their CLEC competitors. CLECs pay \$10.62 (\$11.61-\$0.99) more per pole in annual make-ready expenses than do Cable Companies. This gross disparity exists (and likely has existed

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<sup>1</sup> See, Comments of the *Coalition of Concerned Utilities* in the Pole Attachment Proceeding, WC Docket No. 07-245 (Mar. 7, 2008) ("*Coalition Pole Attachment Comments*"), pp. 53-56.

<sup>2</sup> As the *Coalition* and others have explained, the Commission lacks the statutory authority necessary to supplant decades of joint use/joint ownership agreements with regulated ILEC pole attachment rates. See, e.g., *Coalition Pole Attachment Comments*, pp. 61-70. The ILECs' novel statutory argument that they only recently "discovered" - 10 years after the fact -- that they were excluded from any statutory right of access to utility poles but are now somehow entitled to receive regulated pole attachment rates does not pass the "legal laugh test."



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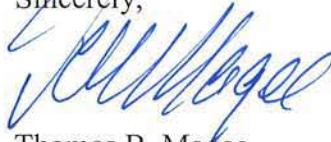
Ms. Marlene H. Dortch, Secretary  
December 8, 2009  
Page 3

ready expenses than do Cable Companies. This gross disparity exists (and likely has existed since CLECs began offering service) at a time when Cable Companies pay an extremely low, subsidized pole attachment rate that is roughly one-half the attachment rate paid by CLECs.

The public policy goal of fair competition compels removal of the Cable industry's sizable competitive advantage. Since the Pole Attachment Act requires CLECs to pay at least the Section 224(e) Telecom rate,<sup>3</sup> in order to equalize annual pole attachment costs between Cable Companies and CLECs, Cable should pay an attachment rate that is higher than the existing Section 224(e) Telecom rate paid by CLECs, such as the City of Seattle rate proposed by the *Coalition*.<sup>4</sup> That rate has been blessed by the courts and represents a much fairer distribution of annual pole costs than does the existing Section 224(d) Cable-Only rate or Section 224(e) Telecom rate.

Your attention to this matter is appreciated. Should you have any questions or require any additional information, please feel free to contact the undersigned.

Sincerely,



Thomas B. Magee  
Jack Richards

cc: Chairman Genachowski  
Commissioner Copps  
Commissioner Clyburn  
Commissioner McDowell  
Commissioner Baker  
Christine Kurth  
Christi Shewman  
William Dever  
Albert Lewis  
Marcus Maher  
Jonathan Reel  
Rebekah Goodheart

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<sup>3</sup> 47 U.S.C. § 224(e). A complete discussion of this statutory restriction is contained in the *Coalition's* Comments in the VoIP Pole Attachment Rate Proceeding, WC Docket No. 09-154 (Sept. 24, 2009), pp. 12-15.

<sup>4</sup> See, *Coalition* Pole Attachment Comments, pp. 26-28 and 39-41.

**PPL UTILITIES MAKE-READY COST SUMMARY DATA**  
**2006 - 2008**

	2006	2007	2008	2006-2008 Avg.
<b>EXISTING ATTACHMENTS ON RECORD</b>				
1. CABLE Attachments	559,811	559,106	572,726	563,881
2. CLEC Attachments	64,137	65,923	68,694	66,251
3. ILEC Attachments	578,850	581,656	584,711	581,739
<b>NEW ATTACHMENTS APPLIED FOR</b>				
4. Total attachments applied for (CABLE, CLEC, ILEC)	6,489	7,106	5,307	6,301
5. # of CABLE in Line 4 above	3,828	4,698	3,304	3,943
6. # of CLEC in Line 4 above	275	528	379	394
7. # of ILEC in Line 4 above	2,386	1,880	1,624	1,963
<b>MAKE-READY COSTS</b>				
8. Total make-ready estimates quoted to ALL attachers	\$1,346,726	\$1,907,491	\$919,292	\$1,391,170/year
9. CABLE make-ready quotes included in Line 8	\$501,689	\$938,401	\$236,965	<b>\$559,018/year</b>
10. CLEC make-ready quotes included in Line 8	\$788,120	\$897,733	\$622,362	<b>\$769,405/year</b>
11. ILEC make-ready quotes included in Line 8	\$56,916	\$71,356	\$59,965	<b>\$62,746/year</b>
<b>ANNUAL MAKE-READY COST PER NEW ATTACHMENT</b>				
12. CABLE (Line 9 ÷ Line 5)	\$131.06	\$199.74	\$71.72	\$141.77
13. CLEC (Line 10 ÷ Line 6)	\$2,865.89	\$1,700.25	\$1,642.12	\$1,952.80
14. ILEC (Line 11 ÷ Line 7)	\$23.85	\$37.96	\$36.92	\$31.96
<b>ANNUAL MAKE-READY COST PER EXISTING ATTACHMENT</b>				
15. CABLE (Line 9 ÷ Line 1)	\$0.90	\$1.68	\$0.41	<b>\$0.99/attach/year</b>
16. CLEC (Line 10 ÷ Line 2)	\$12.29	\$13.62	\$9.06	<b>\$11.61/attach/year</b>
17. ILEC (Line 11 ÷ Line 3)	\$0.10	\$0.12	\$0.10	<b>\$0.11/attach/year</b>

**DECLARATION OF THOMAS G. McBREARTY**

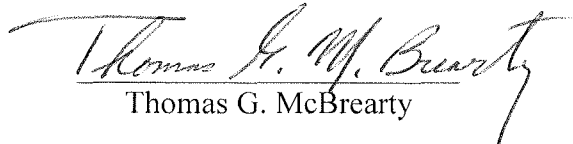
I, Thomas G. McBrearty, do hereby state as follows:

1. I am Senior Business Analyst at PPL Electric Utilities ("PPL").
2. I prepared the attached document entitled "PPL Utilities Make-Ready Cost Summary Data, 2006-2008" ("PPL Make-Ready Cost Summary").
3. The PPL Make-Ready Cost Summary was calculated using data from PPL's Electric Facilities Database and Work Management Accounting System.
4. The PPL Electric Facilities Database specifies the total number of attachments on record across PPL's system by incumbent local exchange carriers ("ILECs"), competitive local exchange carriers ("CLECs") and cable companies.
5. The PPL Electric Facilities Database specifies the total number of attachments applied for in each of the years 2006-2008 by all attachers combined and by each attaching entity.
6. To determine the number of attachments applied for each year by the ILEC, CLEC and cable company provider categories, I added the figures for the companies that fit each category of provider.
7. The PPL Work Management Accounting System specifies the total amount of make-ready cost estimates that were provided by PPL in each of the years 2006-2008 to all attachers combined and to each attaching entity.
8. To determine the amount of make-ready cost estimated for each year by the ILEC, CLEC and cable company provider categories, I added the figures for the companies that fit each category of provider.

I declare under penalty of perjury that the foregoing is true and correct. Executed on

11-16-09.

Date

  
Thomas G. McBrearty